

CORRECTED DECISION*

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SERVICE DATE – LATE RELEASE JANUARY 7, 2015

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1068 (Sub-No. 3X)

MISSOURI CENTRAL RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN
CASS, PETTIS, BENTON, MORGAN, MILLER, COLE, OSAGE, MARIES, GASCONADE,
AND FRANKLIN COUNTIES, MO.

Decided: January 6, 2015

Missouri Central Railroad Company (MCRR) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon approximately 144.3 miles of rail line in two segments: (1) between mileposts 263.5 and 262.906 near Pleasant Hill, in Cass County, Mo., and (2) between milepost 215.325 near Windsor, in Pettis County, Mo., and milepost 71.6 near Beaufort, in Franklin County, Mo.¹ Notice of the exemption was served and published in the Federal Register on December 8, 2014 (79 Fed. Reg. 72,757). The exemption is scheduled to become effective on January 7, 2015.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) in this proceeding on December 12, 2014, concluding, based on the information provided in the Environmental and Historic Reports required by the Board's environmental rules at 49 C.F.R. 1105.7 and 1105.8, and OEA's independent analysis, that the proposed abandonment would not significantly affect the quality of the human environment. In the EA, OEA states that no comments were received from the U.S. Army Corps of Engineers (Corps), but concludes that a Corps permit under Section 404 of the Clean Water Act (33 U.S.C. § 1344) would not be required because MCRR has stated that it has no plans to alter the contour of the underlying roadbed or perform any in-stream work including the dredging and/or placement of fill materials. However, because there are numerous streams and other drainage features along the line segments proposed for abandonment, OEA recommends that a condition be imposed requiring MCRR to consult with the Corps prior to initiating salvage to determine if a Corps permit would be required, and if so, to comply with the Corps' reasonable requirements.

* This decision corrects the title of the decision served on January 6, 2015, which inadvertently indicated that the decision included a Notice of Interim Trail Use.

¹ The notice that was served and published embraced Docket No. AB 1070 (Sub-No. 3X), Central Midland Ry.—Discontinuance of Service Exemption—in Cass, Pettis, Benton, Morgan, Miller, Cole, Osage, Maries, Gasconade, and Franklin Cntys., Mo.

While no comments were received from the U.S. Environmental Protection Agency (EPA) or the Missouri Department of Natural Resources (MDNR), OEA states that it expects the proposed abandonment to have no adverse effects on water quality because MCRR's planned salvage operations would be limited to the removal of rail, steel track materials, and ties only. Moreover, OEA states, no ballast would be removed and there are no plans to remove or alter the contour of the existing roadbed, or undertake any in-stream work or dredge and/or use fill materials. However, because there are numerous streams and other drainage features along the line segments proposed for abandonment, OEA recommends a condition be imposed requiring MCRR to consult with EPA or MDNR (whichever agency has delegated authority to administer the federal National Pollution Discharge Elimination System Program (NPDES)) prior to initiating salvage to determine if an NPDES stormwater permit is required under Section 402 of the Clean Water Act, and if so, to comply with the agency's reasonable requirements.

The EA also states that no comments were received from the U.S. Fish and Wildlife Service (USFWS) regarding project applicability to Section 7 of the Endangered Species Act. However, given that the line segments proposed for abandonment travel through rural and undeveloped land with numerous streams and drainage features, OEA is not certain whether the line segments contain species and/or habitat of concern. Therefore, OEA recommends that a condition be imposed requiring MCRR to contact USFWS prior to beginning salvage activities to discuss potential impacts to any federally listed endangered or threatened species. The condition would require MCRR to report the results of the consultation to OEA in writing, and, should any potential impacts be identified, to consult with OEA and USFWS to develop appropriate mitigation measures.

OEA states that MCRR served its Historic Report on the Missouri Department of Natural Resources State Historic Preservation Office (SHPO). The SHPO submitted comments stating that, based on its review of this proceeding and prior review of two related proceedings in Docket No. AB 1068X and Docket No. AB 1068 (Sub-No. 1X), it is likely that this additional section of rail line will be determined eligible for inclusion in the National Register of Historic Places. The SHPO also states that there is a moderate to high potential for archaeological resources to exist within or adjacent to many sections of the corridor right-of-way, and that additional railroad-related historic properties may exist in the small towns along the rail corridor. Accordingly, OEA recommends that a condition be imposed requiring MCRR to retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way eligible for listing or listed in the National Register until completion of the Section 106 process of the National Historic Preservation Act.²

Comments to the EA were due December 30, 2014. OEA received one environmental comment from the Missouri Farm Bureau Federation (MFB). On January 5, 2015, OEA issued a Final EA responding to the comment and concluding that the proposed abandonment would have no potential for significant environmental impacts if the conditions recommended by OEA in the

² OEA rejected MCRR's request that the salvage process be allowed to move forward prior to completion of the Section 106 process.

EA are imposed. Accordingly, the Board adopts all of OEA's analysis and conclusions and will impose the four environmental conditions recommended by OEA.

In the EA, OEA also states that the right-of-way may be suitable for other public use following abandonment and salvage of the line segments. On December 17, 2014, the Missouri Department of Natural Resources (MDNR) filed a request for the issuance of a notice of interim trail use (NITU) to provide time to negotiate with MCRR for acquisition of the right-of-way for use as a trail under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29. Pursuant to 49 C.F.R. § 1152.29(a), MDNR submitted a statement of its willingness to assume financial responsibility for the right-of-way, and acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the segments of the right-of-way for rail service. By response filed on the same date, MCRR indicated its willingness to negotiate with MDNR for interim trail use.

MDNR also requested imposition of a public use condition under 49 U.S.C. § 10905. MDNR asked that MCRR be prohibited from disposing of the corridor, other than tracks, ties, and signal equipment, except for public use on reasonable terms, and that MCRR be barred from the removal or destruction of potential trail-related structures, such as bridges, trestles, culverts, and tunnels, for a 180-day period from the effective date of the abandonment authorization. Justification for this request is that these structures allegedly have considerable value for recreational trail purposes. MDNR states that the 180-day period is needed to complete a trail plan and begin negotiations with MCRR.

On December 17, 2014, MFB, a farm membership organization, submitted comments in opposition to converting the abandoned segments into a recreational trail.³ MFB states that its preference would be to keep this right-of-way in active rail use. MFB contends that a recreational trail would be disruptive to adjoining farm operations and is concerned that, if existing crossings and access points were closed or restricted, crop and livestock production on both sides of the corridor would be impeded. MFB also points to potential biosecurity risks that could result from public access to the right-of-way if there is interim trail use here. Additionally, MFB requests that the Board ensure that the matters identified in the EA, upon which the Corps, EPA, and USFWS have not yet commented, be addressed before the exemption becomes effective and interim trail use is authorized. MFB requests that the Board conduct public hearings along the corridor in order to allow affected parties an opportunity to have their views heard. MFB states that the need for the Board and local citizens to obtain additional information warrants a stay to allow time for further review and comments by all concerned parties. Further, if a stay is not granted, MFB requests that the Board not grant the public use and NITU requests until OEA has received all information requested in the EA.

On December 22, 2014, MCRR filed a letter in response to MFB, arguing that the State of Missouri's intent to convert these segments into a trail under the Trails Act would be the ideal way to preserve this corridor for potential future rail use that could support future growth in

³ MFB also asks for changes to the Trails Act itself.

agriculture and the local economy.⁴ MCRR maintains that MFB's environmental concerns have been appropriately addressed as part of OEA's environmental review and recommended conditions. MCRR further argues that there is no need or justification for public hearings or a stay.

To the extent MFB's stay request is directed at the exemption, the Board will permit the notice to become effective. Because the Board is imposing a Section 106 condition, MCRR will be prohibited from beginning any salvage activities (including removing any tracks or ties), or consummating the abandonment until the historic review process is complete and the Board has removed that condition. The Board will address MFB's remaining requests, including its stay request, and the requests for trail use and public use conditions in a subsequent decision.

The proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. To the extent MFB's stay request is directed at the exemption, the Board will permit the notice to become effective. The Board will address MFB's remaining requests, including its stay request, and the requests for trail use and public use conditions in a subsequent decision.
3. Upon reconsideration, the notice served and published in the Federal Register on December 8, 2014, exempting the abandonment of the line segments described above is subject to the conditions that: (1) prior to commencement of any salvage activities, MCRR shall consult with the Corps regarding its requirements and, if applicable, shall comply with the reasonable requirements of the Corps; (2) to ensure appropriate consideration of the NPDES requirements, MCRR shall consult with EPA or MDNR (whichever agency is authorized to administer the NPDES program), prior to commencement of any salvage activities and shall comply with the reasonable NPDES requirements; (3) MCRR shall contact USFWS prior to beginning salvage activities to discuss potential impacts to any federally listed endangered or threatened species. MCRR shall report the results of the consultation to OEA in writing. Should any potential impacts be identified, MCRR shall consult with OEA and USFWS to develop appropriate mitigation measures prior to initiating the salvage process; and (4) MCRR shall retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places until the Section

⁴ OEA states that the trail would be an extension of a trail currently being developed on (1) a 5.6-mile portion of MCRR's right-of-way between mileposts 262.906 and 257.283, and (2) a 42-mile portion between mileposts 257.283 and 215.325. Both of these segments were previously authorized for abandonment and interim trail use by the Board. Mo. Cent. R.R.—Aban. Exemption—in Cass Cnty., Mo., AB 1068X (STB served Nov. 26, 2010); Mo. Cent. R.R.—Aban. Exemption in Cass, Henry, Johnson, & Pettis Cntys., Mo., AB 1068 (Sub-No. 1X) (STB served June 7, 2013).

106 process of the National Historic Preservation Act, 16 U.S.C. 470f, has been completed. MCRR shall report to OEA regarding any consultations with the SHPO and the public. MCRR may not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed the condition.

4. This decision and notice is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.